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No. 82-1824

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1982

ROBERT A. HIRSCHFELD, and WILLIAM HIRSCHFELD,
Petitioners,

vs.

RAYMOND F. DREYER,
ROBERT K. CLUNIE, and NADINE M. CLUNIE,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Ninth Circuit

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

In a California dissolution of marriage proceeding becoming final on June 8, 1976, petitioner was awarded custody of the two minor children, Serisa, born March 19, 1964, and William, born January 8, 1966, with reasonable rights of visitation reserved to respondent Nadine M. Clunie.

Subsequently, at a hearing on April 8, 1977, the same court granted to respondent specific visitation, including alternate weekends. However, on April 18, 1977, petitioner removed the minor children to the State of Arizona, thus in effect obliterating the April 8, 1977, ruling, as formalized by the June 8, 1977, order.

On November 26, 1979, Serisa ran away from home but returned to petitioner after visiting her mother in San Jose, California. On May 30, 1980, she again ran away from her father's home, was placed by her doctor in a Protective Services Shelter in Arizona, which she left to return to her mother in California. On June 18, 1980, petitioner obtained an order in the Maricopa County Superior Court in Arizona. See Appendix A, Petitioner' Amended Complaint in this action.

On June 24, 1980, respondent Nadine Clunie obtained an ex parte order in California granting temporary custody of Serisa to her. Following a hearing in California in which petitioner himself was represented, the award was made permanent on August 18, 1980. Petitioner filed his notice of appeal from the California order objecting to California taking jurisdiction of the custody matter. The matter is still pending on appeal in Court of Appeal, First Appellate District, State of California.

Subsequently, on January 6, 1981, petitioner filed this action in the United States District Court in Phoenix, Arizona. In this diversity action Petitioner seeks injunctive relief in the nature of habeas corpus for physical return of Serisa to petitioner as well as other domestic orders (see extensive prayer for relief in complaint), plus compensatory and punitive damages.

Petitioner named as defendant his former wife, Nadine M. Clunie, her present husband, Robert K. Clunie, and her attorney, Raymond F. Dreyer, as well as three California Superior Court judges.

The District Court on June 10, 1981, in an unpublished order, dismissed the action against the three judges on the

ground of judicial immunity. The court dismissed the claims against the other defendants on the ground that the court lacked "jurisdiction over the subject matter by virtue of this matter's involvement with child support and child custody."

Petitioner appealed to the Ninth Circuit Court of Appeals. During the pendency of this appeal, on March 19, 1982, Serisa reached the age of majority.

On October 18, 1982, the Ninth Circuit Court of Appeals, in an unpublished opinion, affirmed the District Court decision dismissing the action for lack of jurisdiction under the domestic relation exception to diversity jurisdiction and holding that the State of California judges sued enjoyed immunity from the claim for damages.

Petitioner has petitioned for a Writ of Certiorari after his petition for rehearing was denied.

I

THE UNPUBLISHED DECISIONS OF THE DISTRICT COURT AND THE NINTH CIRCUIT COURT OF APPEALS DO NOT CONFLICT WITH THOSE OF OTHER CIRCUITS

This court should not feel compelled to grant certiorari in this case on the grounds of conflicts in circuit court decisions. Indeed, the facts in this case, as well as the unpublished nature of the decisions, insure that no conflict exists.

The cases cited by petitioner from other circuits all have very distinct facts not present here. In each of those cases the allegations were that the minor(s) were actually kid-

napped or abducted by the defendants. In the present case a 16 year old girl voluntarily ran away from her father's home and ran to her mother's home. Even on the allegations of petitioner's complaint it is clear that no forcible abduction occurred.

Secondly, the total gravamen of petitioner's complaint concerned custody of Serisa and his attempt to force her to return to his custody. Virtually all of his twelve page amended complaint seeks a resolution of custody matters and injunctive relief. Only incidentally does he seek monetary damages, naming a huge sum, but not comparing in space or verbiage with his eight part demand for custody related injunctions.

Only now in his Petition for Certiorari does petitioner down play the injunctive relief request and insist that monetary damages were his real goal. The reason is obvious: Serisa reached the age of majority on March 19, 1982. The issue became moot.

The cases from other circuits are distinguishable.

In *Lloyd v. Loeffler*, 694 F.2d 489 (7th Cir. 1982), the court considered the case of an *abduction* since the minor child's whereabouts was not known. The action was solely for damages, not for injunctive relief and adjudication of custody. *Acord v. Parsons*, 551 F.Supp. 115 (W. D. Virginia 1982), involved a parental kidnapping. There, the federal court accepted jurisdiction in the tort action which sought only monetary damages, but stayed proceedings until the issue of custody had been determined by the West Virginia courts.

In *Kajtazi v. Kajtazi*, 488 F.Supp. 15 (E. D. N. Y. 1978), the father *abducted* the child and moved to Yugoslavia. The mother sued other persons who allegedly assisted the father for monetary damages in federal court. In that case no one raised the issue of subject matter jurisdiction. Likewise in *Fenslage v. Dawkins*, 629 F.2d 107 (5th Cir. 1980), the father aided by his relatives, *removed* the children to Canada. The court permitted a monetary recovery against relatives of the father for civil conspiracy. The issue of subject matter jurisdiction never arose; custody issues were not involved.

Wasserman v. Wasserman, 671 F.2d 832 (4th Cir. 1982), involved a *forcible removal* of three minor children by the father from one state to another and their subsequent concealment. The plaintiff was not seeking a custody determination, only damages.

In *Bennett v. Bennett*, 682 F.2d 1039 (D.C. Cir. 1982), the mother of a minor child *kidnapped* him and took him out of the District of Columbia to Ohio. The Court of Appeals found no jurisdiction to grant injunctive relief, but did find jurisdiction on the monetary claims. *Bennett* cites *Wasserman* and approves the "existence of federal diversity jurisdiction in a tort suit arising out of an *alleged abduction* by one parent of a child in the custody of the other parent" (682 F.2d at 1042) (emphasis added). The court found no jurisdiction to grant injunctive relief and noted the continuing litigation in the District of Columbia.

The Ninth Circuit has denied jurisdiction when the primary issue concerns the status of parent and child or husband and wife (*Csibi v. Fustos*, 670 F.2d 134 (9th Cir.

1982) (case involved marital status of three persons in action against an estate where two women claimed to be wife of decedent); *Buechold v. Ortiz*, 401 F.2d 371 (9th Cir. 1968) (paternity suit by German citizen in attempt to obtain child support dismissed on grounds more properly a matter for a state court)). In *Csibi* the court disapproved the attempt to circumvent the domestic relations exception by pleading an independent tort (670 F.2d at 138).

Cole v. Cole, 633 F.2d 1083 (4th Cir. 1980), cited by petitioner, does not even involve a custody dispute. There, the charge was abuse of process, malicious prosecution and conspiracy involving an ex-spouse and others. The court determined the charges did not rest on a marital relationship; thus, the domestic relations exception did not apply and the plaintiff could sue his ex-wife for monetary damages.

In the instant case the basis of petitioner's complaint involves custody. No forcible abduction or kidnapping ever occurred or is alleged to have occurred. Petitioner acknowledges that Serisa ran away from home on more than one occasion. In this action he sought to blame others for his parental failures by seeking her forced return to his control and monetary damages from those to whom she turned in her dilemma. None of the cases cited by petitioner or decided by the various jurisdictions compel the district court to assume jurisdiction in such a case.

II**THE NINTH CIRCUIT'S DECISION WILL NOT PROMOTE FORUM SHOPPING**

Petitioner charges that the Ninth Circuit's decision will promote forum shopping. However, it is submitted that an unpublished opinion has no precedent setting value. Further, based upon the distinguishing facts of this case, namely the voluntary actions of the 16 year old minor in removing herself from the custody of petitioner and going to her mother, no precedent is set for a true abduction or kidnapping case.

III**A BROAD REVIEW OF FEDERAL DIVERSITY IS NOT NECESSARY AS A RESULT OF THE NINTH CIRCUIT'S DECISION**

The present case is not a proper vehicle for an extensive determination involving federal diversity issues. This case involves an unpublished decision of limited application, as discussed above. Further, the factual situation is such that the Court could easily become enmeshed in the vituperative allegations and bitterness exhibited by petitioner in his pleadings in this action. Such matters would cloud the issues and involve the court in a domestic relations wrangling.

CONCLUSION

Respondent respectfully submits that this Court should deny certiorari in this case.

Dated: July 29, 1983

Respectfully submitted,

ELEANOR M. KRAFT

Attorney for Respondent

(Appendix A follows)

Appendix A

Robert A. Hirschfeld

William D. Hirschfeld

Plaintiffs, in Propria Persona

PO Box 4842

Scottsdale, AZ 85258

[602] 998-0980

In the United States District Court

For the District of Arizona

No. CIV 81-9 PHX CAM

Robert A. Hirschfeld, individually,

-and-

William D. Hirschfeld, a minor by and through his
father and sole custodian, Robert A. Hirschfeld,
Plaintiffs,

vs.

Nadine M. Clunie [Ex-Hirschfeld]

Robert K. Clunie, her husband,

Raymond F. Dreyer, attorney individually and as
Officer of the Courts of California,

The Hon. Charles Gordon, individually and as
Judge of Santa Clara County, CA Superior Court,

The Hon. Read Ambler, individually and as
Judge of Santa Clara County, CA Superior Court,
-and-

The Hon. Eugene Premo, individually and as
Judge of Santa Clara County, CA Superior Court,
Defendants.

VERIFIED AMENDED COMPLAINT

JURY TRIAL REQUIRED

1. This action arises under, this Court's jurisdiction is invoked under, and Plaintiffs bring this action to vindicate their rights under the Constitution of The United States and its First and Fourteenth Amendments; 28 USCS 1331, 1332 and 1343; 42 USCS 1983, 1985; 18 USCS 2421; 28 USCS 1738A; the laws of Arizona and California; Arizona Revised Statutes 13-1302. The amount in controversy exceeds the sum of Ten Thousand Dollars, exclusive of interests and costs.

2. Plaintiffs Robert Hirschfeld and William Hirschfeld are residents of the State of Arizona. Defendants Nadine Clunie, Robert Clunie, Raymond Dreyer, Charles Gordon, Read Ambler and Eugene Premo are residents of California. Defendants Charles Gordon, Read Ambler and Eugene Premo are Judges of the Santa Clara County Superior Court, and Raymond Dreyer as attorney is acting as an Officer of said Court, and are acting under color of the laws of California.

3. On November 22, 1975, defendant Nadine Clunie abandoned her family, including Robert Hirschfeld and the minor children Serisa and William Hirschfeld. Robert Hirschfeld sought and was awarded temporary custody of Serisa and William and obtained a divorce decree making the said Custody permanent by Order of the Santa Clara County, CA Superior Court on June 8, 1976. [Case No. 341790]

4. In early November, 1975, Robert Hirschfeld and his then-wife Nadine Hirschfeld received marriage counselling from defendant Robert Kent Clunie on the campus of DeAnza Junior College, at which he was and still is an

instructor. Robert Clunie was then duly licensed as a Marriage Counsellor by the State of California. Shortly after abandoning her family, defendant Nadine Clunie listed her address as the same as that of the home of Robert Clunie, and displayed her name on the mailbox thereof during duration of the pendency of her divorce from Robert Hirschfeld. Shortly after said divorce became final, Robert Clunie married the former Nadine Hirschfeld.

5. In January, 1977, defendant Nadine Clunie and defendant Raymond Dreyer brought an action, Santa Clara County No. 341790, against plaintiff Robert Hirschfeld to modify her visitation order from the original "reasonable rights of visitation" to one specifying inclusion of Robert Clunie, a modification which both minor children vehemently opposed. A temporary restraining order was included, pending the Order to Show Cause hearing, restraining Robert Hirschfeld from taking the minor children from California.

6. Between January, 1977 and April, 1977, defendants Nadine Clunie and Raymond Dreyer brought a series of harassing and vexatious actions against plaintiff Robert Hirschfeld related to their Visitation Modification litigation. Among other things, Raymond Dreyer personally threatened Robert Hirschfeld with "putting him in jail", and with a campaign of interference in the financial affairs of Lithic Systems, Inc., the corporation of which Robert Hirschfeld was founder and for seven years president, if Robert Hirschfeld did not assent to Raymond Dreyer's demands regarding the Visitation modification.

7. On April 8, 1977, a final determination was made at a hearing regarding the Visitation Modification, and judge-

ment having been rendered, Robert Hirschfeld was released from the temporary order restraining him from taking the minor children from California.

8. On April 18, 1977, at 12:01 A.M., Robert Hirschfeld and the minor children lawfully left California to seek employment for Robert Hirschfeld, necessitated by the financial collapse of Lithic Systems, Inc. which had occurred during the previous four months vexatious litigation brought by defendants.

9. On April 18, 1977, at 11:31 A.M. [eleven and a half hours after departure of the minor children with Robert Hirschfeld], defendants Nadine Clunie and Raymond Dreyer sought and obtained, without reasonable grounds, an ex-parte custody modification of both children to Nadine Clunie. Said Order was never served, and was quashed subsequently.

10. On June 24, 1977, defendant Nadine Clunie and plaintiff Robert Hirschfeld entered into, and obtained a judicial Order affirming, a stipulated agreement which expressly permitted Robert Hirschfeld to establish residence with the two minor children in a state other than California. Said order by the Superior Court of Santa Clara County, CA, expressly set aside the findings from the Visitation hearing of April 8, 1977, and was the last California Order entered during the three year period until June, 1980.

11. In June, 1977, plaintiff Robert Hirschfeld lawfully established residence in the State of Arizona with both minor children, and all three maintained such residence and domicile continuously thereafter.

12. In January, 1979, his financial situation having deteriorated, Robert Hirschfeld filed a URESA Uniform Reciprocal Child Support Action [Maricopa County, AZ Number DR 103605] through the Maricopa County Attorney's Office. In filing this matter, the Maricopa County Attorney's office first alleged that Robert Hirschfeld and the Minor Children Serisa and William Hirschfeld were residents and domiciles of Arizona, and subject to Arizona jurisdiction. The matter was subsequently refiled as DR 109968, and transmitted to Santa Clara County, California, where, on February 1, 1980, the Superior Court, having jurisdiction over Nadine Clunie, ordered her to pay \$50 per month per child as support to Robert Hirschfeld in Arizona, said Order being based on the Court's finding that Nadine Clunie owed a duty of support to Arizona residents Robert, William and Serisa Hirschfeld.

13. Three monthly payments were made by defendant Nadine Clunie, and transmitted via the URESA system to Robert Hirschfeld in Arizona, between February and June 1980.

14. On November 26, 1979, at approximately 9:30 AM, the minor child Serisa Hirschfeld, left her residence in Arizona, and attempted to conceal herself from Robert Hirschfeld. She was last then seen at about 11:00 AM in the company of Vincent Joseph Burr, an adult with whom she had become sexually active. Serisa was at that time 15 years old. Vincent Joseph Burr transported her to a place of concealment, which she since stated was the automobile and residence of Vineent. After four days of said concealment, Vince Burr transported Serisa to the Phoenix air-

port, where he assisted her in obtaining a ticket on a Western Airline flight to San Francisco. The ticket was prepaid by defendant Nadine Clunie, who had no authority to aid in said concealment and transport. Serisa voluntarily returned from San Jose, CA to Phoenix the following Monday.

15. On May 30, 1980, at approximately 4:15 PM, the minor children Serisa and William Hirschfeld ran from their residence, and concealed themselves from Robert Hirschfeld. They were transported by an automobile belonging to Vincent Burr or one of his friends. On June 5, 1980, Serisa and Vincent Burr were observed arriving at Vincent's residence, and leaving an hour later. When telephoned by Robert Hirschfeld, Vincent Burr alleged not to know Serisa's whereabouts, but, within five minutes, Serisa telephoned Robert in response to his request to Vincent, but continued to conceal her whereabouts. While wilfully concealing Serisa from her sole custodian, Robert Hirschfeld, Vincent Burr did conspire via telephone with defendant Nadine Clunie to persuade Serisa to again travel to California, without consent of Robert Hirschfeld.

16. On June 6, 1980, family physician, Dr. Gerald Myers of Scottsdale, AZ, advised Robert Hirschfeld and the Scottsdale Police that the runaway minor Serisa was in his waiting room. While Serisa was being apprehended, a vehicle owned by Vincent Burr, AZ license RFZ201, was observed cruising repeatedly past the Doctor's office, and driving off at a high rate of speed when Police cars were sighted.

17. Serisa Hirschfeld was held by the Arizona Department of Economic Security at the "Patterdell" facility as

a runaway for the weekend of June 7-8 1980. Despite a general telephone restriction, she was erroneously permitted by Patterdell personnel to telephone Vincent Burr, at his then-listed telephone number, 946-8077. Vincent Burr maintained telephone contact with defendant Nadine Clunie, and acting as Mrs. Clunie's agent and co-conspirator, assisted Serisa on June 9, 1980, in running away from the Patterdell facility and again concealing herself. Immediately thereafter, Vincent Burr's telephone number was disconnected.

18. Between June 9th. and June 22, 1980, defendant Nadine Clunie purchased an airplane ticket, on an interstate common carrier, and caused agents in Arizona, including Vincent Burr and airline employees, to assist Serisa Hirschfeld in going to the Phoenix airport, and boarding a plane with ultimate destination San Jose, or other California Bay Area airport. Defendant Nadine Clunie did not have authority or permission of sole custodian Robert Hirschfeld for said transport, nor did Nadine Clunie have custody of Serisa Hirschfeld at the time she and her Arizona agents took, enticed, or kept Serisa from the lawful custody of Robert Hirschfeld.

19. On June 18, 1980 Plaintiff Robert Hirschfeld sought and obtained an ex-parte temporary restraining order from the Hon. Marilyn Riddell, Judge of the Maricopa County, AZ Superior Court [C414220, appended hereto as exhibit II]. Said Order restrains Vincent Burr from providing alcohol or Marijuana to the minor children Serisa and William Hirschfeld, and restrains Vincent Burr, an adult, from engaging in sexual intercourse with the minor child Serisa Hirschfeld.

20. The ex-parte restraining order was served on Vincent Burr personally on the morning of June 23, 1980. [C414220]. Later on the same day, defendants Nadine Clunie, Robert Clunie and Raymond Dreyer sought and obtained from Judge Charles Gordon, Santa Clara County, CA Superior Court, an ex-parte order granting to Nadine Clunie immediate temporary custody of Serisa Hirschfeld which would, in part, have the effect of denying to plaintiff Robert Hirschfeld standing as sole custodian in the Arizona restraining order against Vincent Burr.

21. Through her continuing sexual relationship with the adult Vincent Burr, the minor child Serisa Hirschfeld was persuaded to cooperate in an attempted custody modification to defendant Nadine Clunie, by defendants Nadine Clunie, Robert Clunie, Raymond Dreyer acting in concert with Vincent Burr and other agents in Arizona.

22. The first notification received by plaintiff Robert Hirschfeld that his daughter Serisa had been transported the second time to California without his permission was in the answer by counsel to Vincent Burr to the OSC/TRO C414220, in which it was first alleged that Robert Hirschfeld "no longer had standing" to file such a complaint on behalf of Serisa, because "she was already in the custody of her mother in California." Said answer was filed, and a copy thereof sent to Robert Hirschfeld, after the June 23rd. signing by Judge Charles Gordon of the ex-parte order, but before June 30.

23. On the morning of June 30, 1980, a hearing was held before Judge Gerber of the Maricopa County, AZ Superior Court, in which the temporary restraining order against

Vincent Burr was made permanent "or until the Plaintiff is no longer legal custodian of Serisa Hirschfeld." At the time of the hearing before Judge Gerber, plaintiff Robert Hirschfeld had not been served with any California orders relating to the attempted custody modification, and counsel for Vincent Burr in Arizona was unable to advise Robert Hirschfeld of such orders, although said counsel was in direct telephone contact with defendant Raymond Dreyer, or someone in Raymond Dreyer's office, and was acting in concert with defendants. Upon learning of the permanent order decision in Arizona, defendant Raymond Dreyer then filed the ex-parte order signed on June 23rd. by Judge Gordon, but withheld from filing until June 30th, said filing being part of a conspiracy among defendants and their Arizona agents to promote the unwholesome and unlawful sexual relationship between Vincent Burr and Serisa Hirschfeld, in exchange for Serisa's cooperation in modifying custody to Nadine Clunie.

24. At the June 30th. hearing in Arizona, counsel for Vincent Burr stated to counsel for Robert Hirschfeld that "it won't matter as soon as Mrs. Clunie takes custody away from Robert Hirschfeld."

25. The ex-parte hearing of June 23d. 1980 was held by Judge Charles Gordon without notice to plaintiff Robert Hirschfeld or opportunity to be heard. Defendants Nadine Clunie, Robert Clunie and Raymond Dreyer conspired to present to Judge Gordon an unconstitutional document supported by a sworn affidavit by Nadine Clunie which she knew, or should have known, contained lies, perjury and distortions, to wit: That Robert Hirschfeld had threatened to place Serisa in a reformatory and/or foster home and

told the child that he does not want her in his home; that the Police in Scottsdale, Arizona have on past occasions refused to release Serisa to her father; that Robert Hirschfeld had threatened Serisa with physical abuse; that Dr. Gerald Myers placed Serisa in a protective services shelter rather than return her to her father. Said false and unsubstantiated accusations were accepted at face value by Judge Charles Gordon in issuing his ex-parte custody modification order, without any attempt to verify with the named Arizona Authorities or persons that defendant's sworn statements were in fact true.

26. Prior to making his ex-parte order, Judge Charles Gordon failed to ascertain, as prescribed by the UCCJA provisions of California and Arizona Law, whether a jurisdictional controversy existed, or whether Serisa Hirschfeld had lawfully entered his jurisdiction.

27. At the time Judge Gordon's original ex-parte order was issued, nearly all of the factual evidence and witnesses necessary for a determination as to whether the sworn claims made by Nadine Clunie were true, were in the State of Arizona.

28. The ex-parte order by Judge Gordon of June 23rd., filed June 30th., was not served upon Robert Hirschfeld during its pendency, and was quashed at the hearing set for showing cause, because none of the parties were present.

29. On July 14, 1980, Robert Hirschfeld "domesticated" his original California Custody Order by filing it in Maricopa County, AZ Superior Court under case number DR-132552, seeking thereby to further establish the fact of Ari-

zona residency of himself and his two minor children, which residency had begun in June, 1977.

30. At the time Serisa Hirschfeld is alleged to have been transported to California in June 1980, Robert Hirschfeld had for several years been employed in Arizona, been registered to vote and had voted, had held a valid Arizona Driver's License and other evidences of Arizona residency. The minor children Serisa and William Hirschfeld had attended public school exclusively in Arizona since 1977, and Serisa had just obtained her Arizona Driver's License, having attained the age of 16.

31. On July 15, 1980, defendants Nadine Clunie, Robert Clunie and Raymond Dreyer obtained a second ex-parte custody modification order from Judge Gordon, based on the same false claims as the first, and additionally falsely alleged acts by Robert Hirschfeld, upon which they sought and received additional ex-parte injunctive relief against Robert Hirschfeld prohibiting him from communicating freely, in exercise of his right to free speech, with defendants Nadine or Robert Clunie, or the friends or employers of Robert Clunie. Said second ex-parte order was made without due notice nor an opportunity to appear and be heard by Robert Hirschfeld, without reasonable attempt by Judge Gordon to ascertain the truthfulness of the allegations made, nor to determine if a jurisdictional dispute existed.

32. On July 22, 1980, said second ex-parte custody modification order was served on plaintiff Robert Hirschfeld.

33. On July 23, 1980, Robert Hirschfeld filed for an Order to Show Cause re Contempt in the domesticated Ari-

zona action of July 14th. After a long series of delaying tactics by defendants and their agents in Arizona, Maricopa County Superior Court Judge Elizabeth Stover found that Arizona was and is the proper jurisdiction for any custody modification re Serisa Hirschfeld, and that the California court erred in failing to follow UCCJA communication requirements with Arizona. [Exhibit III].

34. On August 1, 1980, Counsel appearing Specially for Robert Hirschfeld in Santa Clara County, CA Superior Court, filed a Motion of Inconvenient Forum, moving the California court to stay or dismiss its modification action because, among other things, nearly all of the evidence and witnesses as to the alleged acts upon which the California ex-parte modification and assumption of alleged jurisdiction were based were within the State of Arizona.

35. On August 13, 1980, Santa Clara County Superior Court Judge Read Ambler, to whom the matter had been transferred from Judge Gordon, in the absence of Counsel for Robert Hirschfeld denied the motion of Inconvenient Forum, and set a hearing on the merits of permanent custody modification for August 18th., [within 3 Court days], giving plaintiff Robert Hirschfeld no chance to prepare a defense at the 800 mile distance at which Robert Hirschfeld resided. Raymond Dreyer, defendant, alleged to Judge Ambler that he had attempted to contact counsel for Robert Hirschfeld at the last minute "by calling his office collect, and they refused to accept the call," when the toll to said counsel's office was less than a dollar; further, Raymond Dreyer attempted to rush through the Jurisdictional hearing and get out of Judge Ambler's courtroom in the few minutes it took Robert Hirschfeld's counsel, who was in

the courthouse, to determine that the matter had been re-assigned to Judge Ambler, and to find Judge Ambler's courtroom.

36. On August 14, 1980, Counsel for Robert Hirschfeld entered an Appeal of the August 13th. Jurisdictional ruling of Judge Ambler.

37. On August 18th., Counsel for Robert Hirschfeld, appearing specially, attempted in Judge Ambler's chambers to advise Judge Ambler of the pendency of said appeal, and to stay the hearing on the merits, in the interests of justice. Judge Ambler refused to stay the August 18th. hearing immediately following; Raymond Dreyer informed Counsel for Robert Hirschfeld that, even though said Counsel had been retained solely for purposes of making special appearance to challenge the California court's jurisdiction that in the impending merit hearing, "if you don't represent Mr. Hirschfeld, we'll proceed without you." Thus, Counsel for Robert Hirschfeld on his own initiative, without any preparation, and without express permission from his client, made an appearance in the merits trial, and attempted through uninformed cross-examination, to somehow protect his client's battered rights.

38. In the August 18th, custody modification hearing on the merits, defendant Nadine Clunie did under oath make statements which she knew to be false, to wit: That Serisa Hirschfeld had been first transported from Arizona to California on June 24th.; that Mrs. Clunie had given up custody of Serisa originally by stipulation "because she was under threat of death from Mr. Hirschfeld," that Robert Hirschfeld had physically abused Serisa Hirschfeld; that Robert Hirschfeld had "left the state in contempt of court in April

of '77," that Serisa's desire to maintain her sexual relationship with her boyfriend, Vincent Burr, was not the reason she wanted to come to California, and distortions, misrepresentations and untruths.

39. Raymond Dreyer coached Nadine Clunie and Serisa Hirschfeld to make false statements under oath, and suborned perjury.

40. In the August 18th custody modification hearing, defendant Raymond Dreyer, attorney and thereby an officer of the court sworn to be truthful, did make statements he knew to be false, to wit: "When Serisa came to the state of California she came so under a valid California court order."

40A. Raymond Dreyer advised and counseled defendants to unlawfully remove Serisa Hirschfeld from the State of Arizona, and did institute subsequent custody actions on their behalf and in concert with them, in order to "cover up" their illegal acts.

41. Defendants continue to permit and encourage the sexual relationship between the minor child Serisa Hirschfeld and the adult Vincent Burr, whose whereabouts have since June 23, 1980 been concealed from plaintiffs by a conspiracy of defendants, and who is residing or has for a significant period since June 1980 resided in California for express purpose of continuing said sexual relationship.

42. The minor child Serisa Hirschfeld was expressly transported across the Arizona-California State Line for the purpose of furthering said unwholesome sexual relationship.

43. Defendants have conspired to interfere with the proper exercise of custody by Robert Hirschfeld of William

and Serisa Hirschfeld by clandestine encouragement, via telephone and intermediary agents in Arizona, of both teenagers to run away and to conceal themselves from Robert Hirschfeld.

44. The thus far successful retention of Serisa in California has interfered in the custodial relationship between Robert and William Hirschfeld, inducing severe behavioral and emotional problems in William by virtue of his separation from his close sibling of 14 years.

45. Serisa Hirschfeld has twice been listed as a runaway by the Scottsdale, AZ Police; on both occasions [November 1979 and June 1980] she was influenced by Vincent Burr in concert with defendants to cohabit with him and conceal herself from her father; on both occasions, she exhibited irrational and hysterical behavior symptoms, and on both occasions, defendants conspired to interfere in the responsible exercise of parental authority by Robert Hirschfeld, by transporting her to San Jose, CA.

46. Serisa Hirschfeld has been interviewed and examined by psychologists and psychiatrists in Arizona because of her self-destructive behavior; plaintiff Robert Hirschfeld was attempting to restrain Serisa from running away in June, 1980, so that she could continue to benefit from family counseling, and so that the family in Arizona including plaintiffs could benefit from Serisa's participation in such counseling, when defendants conspired to remove Serisa from a locale in which such beneficial counseling could continue, and instead conspired to reinforce and justify in the child's mind her behavior relating to sexual, drug and alcohol excesses, centered around her relationship with Vincent Burr.

47. On July 15, 1980, defendants Nadine Clunie and Raymond Dreyer filed an action separate from the custody modification [Santa Clara County number 429713, filed through the URESA office of the Santa Clara County Attorney's Office] to terminate the URESA child-support order of February 1, 1980 in regards to both Serisa and William.

48. In support of said URESA termination action, defendants knowingly asserted the false statement that William Hirschfeld no longer was in the custody of Robert Hirschfeld, when in fact no custody modification of William existed.

49. Judge Read Ambler allowed the withholding of the duty of support owed by Nadine Clunie on behalf of William Hirschfeld, and permitted month-to-month continuances of the URESA matter while allowing the child-support payments for William to be held in the bank account of Raymond Dreyer.

50. On February 10, 1980, Judge Eugene Premo held a hearing on the URESA matter, which had just been transferred to him by Judge Ambler, in which Judge Premo refused to consider petitioner's affidavit concerning petitioner's financial circumstances, stated that he assumed that petitioner [Robert Hirschfeld, plaintiff] had "the ability to support William Hirschfeld", and terminated the \$50/month duty of support owed by Nadine Clunie on behalf of William Hirschfeld, and additionally ordered Robert Hirschfeld to pay \$500 attorney's fees to Nadine Clunie for Raymond Dreyer's alleged fees.

51. On August 18, 1980, Judge Read Ambler granted a motion for awarding of \$250 per month child support pay-

able by Robert Hirschfeld to Nadine Clunie, despite the fact that her requested petition was for only \$150 per month, and neither Robert Hirschfeld nor his counsel, appearing specially, had been given advance notice of the increased amount. Said order was made solely on the testimony of Serisa Hirschfeld as to her father's alleged income, and was based on hearsay rather than knowledge.

52. Defendants conspired to transport Serisa Hirschfeld unlawfully to a distant jurisdiction [Santa Clara County, CA] where Raymond Dreyer is well known to judges, and where Family Relations Professionals, including the Conciliation Court, are professional colleagues of Robert Clunie, defendant, and therefore less likely to give unbiased testimony regarding custody of Serisa. Conciliation Court chief Warren Weiss of Santa Clara County is a personal friend of defendant Robert Clunie, and has presented lectures at the invitation of Robert Clunie in Mr. Clunie's Junior College classroom.

53. Raymond Dreyer has repeatedly and maliciously sought to place plaintiff Robert Hirschfeld in legal jeopardy because of personal animosity toward Robert Hirschfeld, and exceeded the reasonable bounds of advocacy for his clients Nadine Clunie and Robert Clunie by making defamatory remarks, both on and off the record, to Judges and other persons regarding Robert Hirschfeld, to wit: That Robert Hirschfeld was not a proper or fit custodian for the minor children; that Robert Hirschfeld had committed or threatened acts of violence which had not occurred or been threatened; that pro-se pleadings by Robert Hirschfeld or stipulated agreements in which parties were not represented by counsel should not be accorded credibility guaranteed by statute or by constitutional right.

54. Raymond Dreyer has written Orders for signature by Judges relating to Robert Hirschfeld which have exceeded in scope and intent the Orders made in open court, to wit: That the approximate time granted to Robert Hirschfeld for preparation of response regarding the motion of Respondent for Child Custody, Child Support, Attorney's Fees and Costs and Injunctive Orders during verbal discussion before Read Ambler on August 1, 1980, was stated by Raymond Dreyer in his Order Following Order to Show Cause Hearing of August 1, 1980 as "shall be heard no later than four days afterward."

55. Raymond Dreyer deliberately omitted evidence on several occasions that would be adverse to his viewpoint which would be included for completeness by any reasonable lawyer, to wit: In the jurisdictional hearing of August 13, 1980, while Counsel for Robert Hirschfeld was absent by virtue of his seeking to determine to which Judge the matter had been assigned, Raymond Dreyer professed to have "forgotten" about the Stipulated Order of June 24, 1977, with which Raymond Dreyer was fully familiar, and which Judge Read Ambler had neglected to read in the record before him, thus permitting Judge Ambler to proceed to a denial of Robert Hirschfeld's Motion of Inconvenient Forum based upon Judge Ambler's erroneous and openly stated belief that some restriction had made Robert Hirschfeld's departure from California in April 1977 illegal.

56. Raymond Dreyer has further threatened to take harassing or nuisance actions against Robert Hirschfeld to discourage Robert Hirschfeld from making personal appearance in his own behalf, to wit: Raymond Dreyer

stated to Counsel for Robert Hirschfeld on August 18, 1980, that he would take such actions "if Robert Hirschfeld ever sets foot in California." Defendants have in concert on other occasions made similar threats to Robert Hirschfeld.

57. In suborning the perjury of Nadine Clunie and Serisa Hirschfeld, Raymond Dreyer caused Serisa Hirschfeld to make false statements regarding her father and her feelings toward her father which would have the effect of demoralizing and making less effective the resolve to see Justice done by Robert Hirschfeld.

58. Robert Hirschfeld has since June 1980 been diverted and preoccupied from earning a living by litigation made necessary by defendant's actions.

59. William Hirschfeld has since June 1980 suffered deep depression and behavioral dysfunctions requiring expensive treatment, as a consequence of defendant's actions.

60. Serisa Hirschfeld has been permitted by defendants since June 1980 to reinforce behavior based upon what she had previously learned by observing acts of her mother, Nadine Clunie, to wit: that honesty and family integrity are less important than self-gratification.

61. Defendants in concert have threatened to continue or to initiate new harassing or vexatious actions against Robert Hirschfeld in order to dissuade him from continuing to pursue remedies to the previous damaging acts of defendants, said threats including interference with Robert Hirschfeld's income and/or property in Arizona and/or in California.

62. As a proximate result of the actions of the defendants as set forth above, the plaintiffs have suffered and sustained the following injuries and damages:

- (a) Deprivation without due process of law of civil rights to the care, company, companionship, society, affection and lawful custody of Serisa Hirschfeld.
- (b) Pain and suffering, past and future.
- (c) Loss of earnings and earning capacity past and future.
- (d) Denial to Robert Hirschfeld of a legitimate duty of support by Nadine Clunie and substitution thereof of a disproportionately larger duty of support from Robert Hirschfeld to Nadine Clunie, constituting sexual bias and denial to plaintiffs of equal protection of the law.
- (e) Through initiation and perpetuation of "gag orders" denial to plaintiffs of the right to free speech.
- (f) The unnecessary incursion of substantial legal fees and expenses in pursuit of protection of rights, privileges and immunities denied in concert by defendants.
- (g) Denial by defendants in concert of Robert Hirschfeld's right to protection of the laws of Arizona, of lawful jurisdiction and of full faith and credit thereof.
- (h) Denial by defendants in concert of plaintiff's right to due notice and an opportunity to be heard.
- (i) By removal unlawfully to a distant jurisdiction, creation of a psychological disadvantage for plaintiffs, and an unnecessarily high cost of legal representation.
- (j) The intentional infliction of emotional distress.

(k) Denial to William Hirschfeld of a legitimate duty of support from Nadine Clunie in violation of his right to equal protection of the law.

(l) Long-term emotional and behavioral damage to William Hirschfeld, and damage to Robert Hirschfeld in that Robert Hirschfeld must as custodian deal with the continued stress created by such damage to William.

(m) Restraint, by threat, of the civil right to travel in interstate commerce.

WHEREFORE, plaintiffs pray judgment as follows:

COMPENSATORY DAMAGES OF \$1,500,000 and PUNITIVE DAMAGES of \$1,500,000, Jointly and Severally from defendants to plaintiffs.

ATTORNEY'S FEES AND COSTS, and reasonable compensation for the litigant's time when litigating In Propria Persona.

INJUNCTIVE RELIEF as follows:

(a) That all defendants be enjoined from concealing, restraining or aiding in the concealment or restraint of Serisa Hirschfeld, and that said defendants shall cause the minor child Serisa Hirschfeld to be delivered to Robert Hirschfeld or his designee within Arizona, for purposes of family counseling, psychological evaluation and reconciliation with plaintiffs.

(b) That defendants be enjoined from violating or conspiring to violate the terms of the Arizona restraining order against Vincent Burr (C414220).

(c) That defendants be enjoined from enforcement or collection of any Santa Clara judgement rendered since

June 1980 for child support or attorney's fees in favor of defendants, or relating to custody of Serisa or William Hirschfeld.

(d) That defendants be enjoined from initiating or prosecuting retaliatory nuisance actions against plaintiffs, including but not limited to threats, molesting of plaintiffs, their friends or relatives, actions against plaintiff's property or interference with plaintiff's income or earnings, or interference with plaintiff's rights, privileges and immunities.

(e) That defendants be ordered to reinstate and continue paying to Robert Hirschfeld the URESA Child Support originally awarded him on February 1, 1980, and to forthwith pay withheld portions thereof to Robert Hirschfeld in Arizona.

(f) That defendants be enjoined from granting consent for marriage to Serisa Hirschfeld, from any emancipation or adoption proceedings before Serisa attains the age of 18, without consent of her father, Robert Hirschfeld.

(g) That defendants be enjoined from interference with Robert Hirschfeld's lawful custody of William Hirschfeld.

(h) That defendants be enjoined from interfering with plaintiff's right of free speech and of plaintiff's right to travel in interstate commerce.

Plaintiffs further request the court's consent to amendment of this Complaint upon revelation by discovery or otherwise of further acts committed by defendants or of other co-conspirators thus far concealed from or unknown to plaintiffs.

Dated this 2nd. day of March, 1981.

/s/ Robert A. Hirschfeld
Robert A. Hirschfeld, Plaintiff
in Persona Propria, individually
and by and for the minor child
William Hirschfeld, P.O. Box
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